

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

MDL NO. 1456  
Civil Action No. 01-12257-PBS  
Subcategory No: 03-10643

Judge Patti B. Saris

THIS DOCUMENT RELATES TO:

*The City of New York v. Abbott Labs., et al.*  
(S.D.N.Y. No. 04-CV-06054)  
*County of Suffolk v. Abbott Labs., et al.*  
(E.D.N.Y. No. CV-03-229)  
*County of Westchester v. Abbott Labs., et al.*  
(S.D.N.Y. No. 03-CV-6178)  
*County of Rockland v. Abbott Labs., et al.*  
(S.D.N.Y. No. 03-CV-7055)  
*County of Dutchess v. Abbott Labs., et al.*  
(S.D.N.Y. No. 05-CV-06458)  
*County of Putnam v. Abbott Labs., et al.*  
(S.D.N.Y. No. 05-CV-04740)  
*County of Washington v. Abbott Labs., et al.*  
(N.D.N.Y. No. 05-CV-00408)  
*County of Rensselaer v. Abbott Labs., et al.*  
(N.D.N.Y. No. 05-CV-00422)  
*County of Albany v. Abbott Labs., et al.*  
(N.D.N.Y. No. 05-CV-00425)

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**DECLARATION OF KIM B. NEMIROW TRANSMITTING DEPOSITION  
TESTIMONY AND HEARING TRANSCRIPTS RELIED UPON IN SUPPORT OF  
DEFENDANTS' JOINT MOTION FOR SUMMARY  
JUDGMENT ON PLAINTIFFS' "FUL FRAUD" CLAIMS**

<i>County of Warren v. Abbott Labs., et al.</i>	)
(N.D.N.Y. No. 05-CV-00468)	)
<i>County of Greene v. Abbott Labs., et al.</i>	)
(N.D.N.Y. No. 05-CV-00474)	)
<i>County of Saratoga v. Abbott Labs., et al.</i>	)
(N.D.N.Y. No. 05-CV-00478)	)
<i>County of Columbia v. Abbott Labs., et al.</i>	)
(N.D.N.Y. No. 05-CV-00867)	)
<i>Essex County v. Abbott Labs., et al.</i>	)
(N.D.N.Y. No. 05-CV-00878)	)
<i>County of Chenango v. Abbott Labs., et al.</i>	)
(N.D.N.Y. No. 05-CV-00354)	)
<i>County of Broome v. Abbott Labs., et al.</i>	)
(N.D.N.Y. No. 05-CV-00456)	)
<i>County of Onondaga v. Abbott Labs., et al.</i>	)
(N.D.N.Y. No. 05-CV-00088)	)
<i>County of Tompkins v. Abbott Labs., et al.</i>	)
(N.D.N.Y. No. 05-CV-00397)	)
<i>County of Cayuga v. Abbott Labs., et al.</i>	)
(N.D.N.Y. No. 05-CV-00423)	)
<i>County of Madison v. Abbott Labs., et al.</i>	)
(N.D.N.Y. No. 05-CV-00714)	)
<i>County of Cortland v. Abbott Labs., et al.</i>	)
(N.D.N.Y. No. 05-CV-00881)	)
<i>County of Herkimer v. Abbott Labs. et al.</i>	)
(N.D.N.Y. No. 05-CV-00415)	)
<i>County of Oneida v. Abbott Labs., et al.</i>	)
(N.D.N.Y. No. 05-CV-00489)	)
<i>County of Fulton v. Abbott Labs., et al.</i>	)
(N.D.N.Y. No. 05-CV-00519)	)
<i>County of St. Lawrence v. Abbott Labs., et al.</i>	)
(N.D.N.Y. No. 05-CV-00479)	)
<i>County of Jefferson v. Abbott Labs., et al.</i>	)
(N.D.N.Y. No. 05-CV-00715)	)
<i>County of Lewis v. Abbott Labs., et al.</i>	)
(N.D.N.Y. No. 05-CV-00839)	)
<i>County of Chautauqua v. Abbott Labs., et al.</i>	)
(W.D.N.Y. No. 05-CV-06204)	)
<i>County of Allegany v. Abbott Labs., et al.</i>	)
(W.D.N.Y. No. 05-CV-06231)	)
<i>County of Cattaraugus v. Abbott Labs., et al.</i>	)
(W.D.N.Y. No. 05-CV-06242)	)

<i>County of Genesee v. Abbott Labs., et al.</i>	)
(W.D.N.Y. No. 05-CV-06206)	)
<i>County of Wayne v. Abbott Labs., et al.</i>	)
(W.D.N.Y. No. 05-CV-06138)	)
<i>County of Monroe v. Abbott Labs., et al.</i>	)
(W.D.N.Y. No. 05-CV-06148)	)
<i>County of Yates v. Abbott Labs., et al.</i>	)
(W.D.N.Y. No. 05-CV-06172)	)
<i>County of Niagara v. Abbott Labs., et al.</i>	)
(W.D.N.Y. No. 05-CV-06296)	)
<i>County of Seneca v. Abbott Labs., et al.</i>	)
(W.D.N.Y. No. 05-CV-06370)	)
<i>County of Orleans v. Abbott Labs., et al.</i>	)
(W.D.N.Y. No. 05-CV-06371)	)
<i>County of Ontario v. Abbott Labs., et al.</i>	)
(W.D.N.Y. No. 05-CV-06373)	)
<i>County of Schuyler v. Abbott Labs., et al.</i>	)
(W.D.N.Y. No. 05-CV-06387)	)
<i>County of Steuben v. Abbott Labs., et al.</i>	)
(W.D.N.Y. No. 05-CV-06223)	)
<i>County of Chemung v. Abbott Labs., et al.</i>	)
(W.D.N.Y. No. 05-CV-06744)	)
AND	)
<i>County of Nassau v. Abbott Labs., et al.</i>	)
(E.D.N.Y. No. 04-CV-5126)	)

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I, the undersigned Kim B. Nemirow, submit this Declaration. I have personal knowledge of the following facts:

1. I am an attorney at the law firm of Ropes & Gray LLP, counsel to Defendants Schering-Plough Corporation, Schering Corporation and Warrick Pharmaceuticals Corporation.
2. Attached to this Declaration as Exhibit A is a true and correct copy of the transcripts of the deposition of Sue Gaston, dated January 24, 2008 and March 19, 2008, along with exhibits 2, 5, 6, and 7 to that deposition.
3. Attached to this Declaration as Exhibit B is a true and correct copy of the transcript of the deposition of Gail Sexton, dated May 20, 2008.
4. Attached to this Declaration as Exhibit C is a true and correct copy of excerpts from the transcript of the July 26, 2007 Motion Hearing, *In re Pharm. Indus. Avg. Wholesale Price Litig.*, No. 01-CV-12257-PBS, MDL No. 1456 (July 26, 2007) [Docket No. 4519].

5. Attached to this Declaration as Exhibit D is a true and correct copy of excerpts from the transcript of the deposition of Harris L. Devor, dated December 9, 2008, December 10, 2008, and December 11, 2008.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: May 15, 2009

/s/Kim B. Nemirow  
Kim B. Nemirow

#### **CERTIFICATE OF SERVICE**

I hereby certify that on May 15, 2009, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Kim B. Nemirow  
Kim B. Nemirow